

COMMERCIAL FISHING INDUSTRY VESSEL SAFETY

Capt. James McDonald

U.S. Coast Guard, Washington, D.C.

THE COAST GUARD PLAN TO IMPLEMENT THE COMMERCIAL
FISHING INDUSTRY VESSEL REGULATIONS

Captain James M. MacDonald

Chief, Merchant Vessel Inspection and Documentation
Division
U.S. Coast Guard, Washington, DC

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION.....	1
II. WHAT THE COMMERCIAL FISHING VESSEL SAFETY ACT OF 1988 REQUIRES OF THE INDUSTRY AND THE COAST GUARD.....	2
III. IMPLEMENTING/ENFORCING THE CFIVSA OF 1988.....	4
IV. ADMINISTRATIVE PROCEDURES TO DETER FUTURE VIOLATIONS OF THE FISHING VESSEL SAFETY REGULATIONS.....	8
V. THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ABOARD FISHING INDUSTRY VESSELS..	10
VI. SUMMARY/CONCLUSIONS.....	12

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I. INTRODUCTION

My purpose for being here today is to explain how the Coast Guard will implement the new rules under the Commercial Fishing Industry Vessel Safety Act of 1988. the purpose of the Act is to save lives in the commercial fishing industry, the industry with one of the highest death rates of any in the U.S. Our plan is a preventative approach to carry out the Coast Guards' goal to promote the safety of lives and property and protect the marine environment.

Two years have passed since the Act was signed into law. During these two years the Coast Guard has published the Notice of Proposed Rulemaking, met with the Commercial Fishing Industry Vessel Advisory Council five times, and prepared a fishing vessel operation licensing study for Congress. Outside the Coast Guard, the National Academy of Sciences has studied whether fishing industry vessels should be inspected.

The regulations and implementation plan will affect 131,000 fishing industry vessels. Approximately 31,000 of these vessels are documented. No one has officially tried to figure out the number of fishing vessels that are not documented. The Coast Guard has used the figure 100,000 as an estimate. These are vessels that are numbered by the states except in Alaska where it is still done by the Coast Guard. Documented vessels are the largest of the fishing vessel fleet. By law vessels have to be documented because they are "commercial" and measure over five net tons. Measure is the correct term. Many people still confuse the term net tons with the unit of weight. It has a different meaning. The nautical terms gross and net tons refer to a measure of volume within the vessel. One-hundred cubic feet equals one ton.

II. WHAT THE COMMERCIAL FISHING INDUSTRY VESSEL SAFETY ACT OF 1988 REQUIRES OF THE INDUSTRY AND THE COAST GUARD

The Act establishes basic safety standards, emergency equipment to be carried, and mandates several safety initiatives to be implemented by the U.S. Coast Guard. Congress let the fishing industry vessels remain as uninspected vessels. Areas of contention

during passage of the legislation were whether a vessel inspection program, similar to our inspection program for freight, passenger, and tank vessels was warranted; and whether a licensing program similar to that for mariners on inspected vessels, was warranted.

Congress addressed the inspection issue by mandating a study of fishing vessel safety problems. This will result in recommendations on the need for and the scope of a vessel inspection program. The study was undertaken by the National Academy of Sciences Marine Board. The study report is nearing completion and is presently expected to be published this January. The study will identify and characterize the safety problems in the U.S. fishing industry by reviewing vessel casualties, personnel injuries, and considering the views of informed fishing vessel safety experts. The study will address the safety problems which are identified and recommend alternative safety programs. The recommendations may include educational programs for seafarers and management; vessel design, construction and conversion standards; vessel inspection programs; and licensing schemes.

III. IMPLEMENTING/ENFORCING THE CFIVSA OF 1988

How to implement and enforce the Commercial Fishing Industry Vessel Safety Act of 1988? This task will not be easy because the Act was passed without a related Appropriations Bill--that means that Congress did not provide any additional funds to pay for this new program when it was enacted. More importantly, this meant no additional people were provided to implement the Act.

In light of this fact, the first phase of the implementation/enforcement plan is designed to work with available Coast Guard resources along with making the part time district fishing vessel coordinators full time positions in Fiscal Year 1991. It concentrates on public awareness of the Act through education of the industry, examinations of vessels in the normal course of business, and through creative use of other Coast Guard and industry personnel.

The Plan consists of full time Fishing Vessel Safety Coordinators spear heading the efforts; continued at sea examinations in conjunction with search and rescue and law enforcement boardings; and dockside examinations conducted by regular, reserves,

the auxiliary, and recognized third party organizations such as the American Bureau of Shipping (ABS) and the National Organization of Marine Surveyors (NAMS).

The back bone of the plan is the Fishing Vessel Safety Coordinator. He will coordinate examinations and training of Coast Guard personnel on provisions of the Act and determine how the Coast Guard can best improve safety within the fishing industry. We anticipate that these positions will be filled by Coast Guardsmen that will provide the same effort and service on a full time basis that the Pacific Northwest is receiving from Commander Dujenski in the 13th Coast Guard District and Lieutenant Commander Sicks in the 17th Coast Guard District.

Field enforcement will rely on two strategies. first, shore stations and cutters will continue to conduct the same number of examinations at sea. There will be no increase in boardings associated with the new rules. The change the industry will see is that cutters and shore units will check for the additional requirements over and above what they already examine.

A more in-depth examination will be carried out dockside as time permits. During the first phase of our plan, personnel from Marine Safety Offices, and shore stations would conduct dockside examinations.

Dockside examinations are our preferred method of meeting the safety needs of the industry. A dockside visit to a vessel would encompass a more in-depth examination, such as removing the exposure suits from their storage bags and checking their material condition. These examinations would be done on a random basis. Ideally we hope to arrange these visits for the convenience of the owner through fishing vessel cooperatives, organizations, and individual owners.

Dockside visits to fishing vessels are not new. The Coast Guard in Alaska has used coordinated multi-unit boarding teams prior to the Sitka Sac Roe Herring Fishery opening. The number of vessels boarded during each of the last three years were 79, 240, and 140. Also, this year, 10 people were temporarily assigned to Bristol Bay during the salmon opening.

Looking in-house, we are going to use Coast Guard reservists to augment regular Coast Guardsmen at marine safety offices. We envision activities similar to a program run in California from 1981 to 1985. There, reservists spent their weekends visiting clusters of commercial fishing vessels to conduct prearranged examinations. Like the dockside examinations mentioned earlier, we would work closely with associations to

make sure that this program gets off the ground smoothly.

Additionally, the Coast Guard Auxiliary and third party organizations will complement efforts by active duty and reserve personnel. They can not be included under the heading of law enforcement. In particular, the auxiliary is prohibited from being used for law enforcement. The main purpose of the proposed auxiliary and third party examination programs is to help the owner/operator comply with the regulations and by providing a direct, face to face interaction with the owner/operator.

Many of the vessels we intend to reach are already being surveyed by third parties. For example, NAMS surveyors presently conduct surveys of commercial fishing industry vessels for a myriad of reasons and frequently include checking for compliance with applicable Coast Guard regulations as a service to their clients. NAMS surveyors annually examine approximately 20% of the 30,000 documented and 10% of the 100,000 state numbered commercial fishing industry vessels. Owners of commercial fishing industry vessels could benefit from these examinations by having experienced, professional surveyors verify compliance

with the regulations. By recognizing the work done by trained examiners and surveyors, these complimentary efforts will be a very important force multiplier.

The second phase of our plan involves seeking funds from Congress to obtain additional personnel who will be dedicated full time to fishing industry vessel safety. We are competing for funds in the budget process for fiscal year 1992. These funds which we are asking Congress for would add 50 full time fishing vessel examiners. These examiners would be stationed along the Pacific, Gulf, and Atlantic coasts. Their job would be to arrange and conduct dockside safety examinations of fishing industry vessels.

IV. ADMINISTRATIVE PROCEDURES TO DETER FUTURE VIOLATIONS OF THE FISHING INDUSTRY VESSEL SAFETY REGULATIONS

Our plan will enforce and publicize the U.S. laws and regulations applicable to fishing vessels. When discrepancies are found that are an obvious disregard for the new rules, consideration must be given for penalty action in order to deter future violations. Reports of discrepancies aboard fishing industry vessels will eventually reach a Coast Guard hearing officer. The hearing officer will review a case to

decide if prima facie evidence exists. If it does, a preliminary assessment letter is sent to the owner or operator of the vessel. If the assessment is contested, the owner or operator can request a hearing with the hearing officer. At the hearing, the case may be dismissed or an appropriate penalty may be assessed in light of any new evidence submitted by the party. Our hearing officers are located around the United States in San Francisco, Boston, Norfolk, Miami and New Orleans. Here in the Pacific Northwest, especially Alaska, the hearing officer is far from the fishing vessel owners. Owners and operators of vessels have requested hearings closer to their hailing ports. Hearing officers have accommodated these requests conducting hearings at the Coast Guard district offices in Seattle and Juneau.

"On scene termination" to prevent an accident is also an option to deter future violations. The Coast Guard may direct a vessel to return to a mooring until the situation creating a hazard is corrected or ended. We are currently evaluating the conditions and situations of non-compliance that would require termination for the safety of the individuals on board. Our desire is to provide our field enforcement

personnel with clear guidance that will lead to consistent application of the authority.

V. THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ABOARD FISHING INDUSTRY VESSELS

All my visits with members of the fishing industry do not pass without questions regarding OSHA's jurisdiction aboard fishing industry vessels. The Occupational Safety and Health Administration has an ongoing relationship with the fishing vessel industry. They derive their jurisdiction from the Occupational Safety and Health Act which gives them broad jurisdiction over work place safety unless other agencies exercise statutory authority to prescribe standards. They have an uninspected vessel safety program that focuses in on the factory aspects of the working environment of fish processing. They also administer a crane certification program for those cranes involved in longshoring.

During the summer of 1989 there was a flurry of Coast Guard and OSHA activity to address the immediate concerns of the fishing industry. A few people in the fishing industry misread a Department of Labor memo entitled, "OSHA/U.S. Coast Guard Jurisdiction" as a new

tasking designed to increase the OSHA activity aboard fishing vessels. This was not the case. It was a restatement of their existing policy.

Recently, in response to the ALEUTIAN ENTERPRISE sinking, an OSHA field officer issued an order to enforce the Coast Guard's proposed safety regulations as an industry standard under the authority of Section 5(a)(1) of the Occupational Safety and Health Act. This section requires each employer to furnish a place of employment free from recognized hazards likely to cause death or serious physical harm to employees. OSHA has rescinded that order and will not cite safety or health violations which are covered by existing or proposed Coast Guard regulations for fishing industry vessels. During the next year we will meet with OSHA at the headquarters level to discuss joint jurisdictional issues relating to fishing industry vessels. These meetings will be aimed at developing a Memorandum-of-Understanding between our two agencies for uninspected fishing industry vessels. This will be the written guidance that will be used by employees of both our agencies in clarifying jurisdictional issues aboard fishing industry vessels.

VI. SUMMARY/CONCLUSIONS

We are looking forward to initiating the first phase of our implementation plan. This will consist of the Coast Guard District Fishing Vessel Safety Coordinators developing the necessary relationship with the fishing industry to insure a smooth implementation of the fishing vessel safety regulations. I urge the fishing industry to make an effort to get to know the people in these positions and their staff. The plan was designed to operate anticipating only a small increase in resources. The strengths of the plan will be the Fishing Vessel Safety Coordinators overseeing all Coast Guard fishing vessel safety activity in each district and the one Coast Guard concept using the available regulars, reserves and auxiliaries.

The challenges are to ensure we train and qualify all personnel for the tasks assigned to them; to administer an efficient and fair program; and to listen, understand, and be responsive.

BIOGRAPHICAL SKETCH

CAPTAIN JAMES M. MACDONALD

Captain James M. MacDonald has been Division Chief of the Coast Guard Merchant Vessel Inspection and Documentation Division at the Coast Guard Headquarters since 12 August 1988.

Following his graduation from the Coast Guard Academy in 1968, Captain MacDonald's early assignments included duty aboard the Polar Ice Breaker EDISTO and as Coast Guard Liaison Officer and Instructor at the Naval Damage Control Training Center at Philadelphia.

Captain MacDonald has served as Executive Officer of MIO Kobe, Japan from 1981 to 1982; as Chief, Inspection Department and Executive Officer of MSO Honolulu, Hawaii from 1982 to 1985; as Chief, Commercial Vessel Safety Branch Fourteenth Coast Guard District from 1985 to 1986 and as Commanding Officer of Coast Guard Section Marianas from 1986 to 1988.

Other assignments include Assistant Marine Environmental Protection Branch Chief in the Twelfth District and Marine Inspection at Marine Inspection Office, Los Angeles-Long Beach.

In addition to his Bachelor of Science Degree in Engineering from the Coast Guard Academy, Captain MacDonald holds a Master of Science Degree in Management from Rensselaer Polytechnic Institute, Troy, New York.